

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISIDITION

WRIT PETITION NO.3191 OF 2003

Shri.Shahu Yuvak Mandal
and Anr. ..Petitioners

Vs.

Shri.Sanjay Mahadeo Sisal
and Or. ..Respondents

.....
S.A.Joshi for Petitioners
Dilip Bodke for Respondent no.1
.....

CORAM : B.H.MARLAPALLE, J.
DATE : MARCH 7, 2005

P.C.:

1. Heard Mr.Joshi, the learned counsel for the petitioner-Management which is challenging the decision of the School Tribunal at Kolhapur in Appeal No. 10 of 2000 rendered on 7.3.2003.

2. The respondent no.1 came to be appointed as a Peon since 22.9.1998 and on probation for a period of two years. He belongs to the N.T. category. He was not allowed to sign the muster roll pursuant to the notice of termination dated 20.12.1999 and ultimately he was removed from service from 19.1.2000. He therefore, filed the appeal No. 10 of 2000 and prayed for reinstatement. The School Tribunal after hearing both the parties, held that the termination

order effected from 19.1.2000 was illegal and it was, therefore, set aside. The respondent came to be reinstated with full backwages and other incidental benefits. For the last two years also this order has also not been implemented.

3. The termination order dated 20.12.1999 read as under:

. "You are working as a temporary class IV Peon in our school. As the School committee Chairman found your behaviour of speaking rudely, signing on muster on absent day and unsatisfactory work etc. Therefore, you are hereby discharged from services since 19th January, 2000 as per instructions from Honourable School Committee Chairman which be noted. Hence, the notice."

4. In its written statement the Management contended that the employee was given opportunities to improve from time to time and he was issued as many as three notices but did not show any improvement. As a last alternative, the notice of termination was served and he was removed from service on 19.1.2000. He was a probationer and therefore, it was not necessary to conduct the departmental enquiry before he was removed from service. The School Tribunal, after assessing the evidence noted that none of these three notices dated 18.12.1998, 30.7.1999 and 25.8.1999 was

served on the respondent-employee. It had referred to the Scheme of Rule 15(6) of M.E.P.S. Rules 1981 and the failure on the part of the Management to place on record any other material in support of unsatisfactory performance by way of due assessment recorded by the Management. Rule 15(6) reads as under:

. "Performance of an employee appointed on probation shall be objectively assessed by the Head during the period of his probation and record of such assessment shall be maintained".

. The School Tribunal noted that the Head Master was the Secretary of the School Tribunal and termination order was signed by him in the same capacity but at the instance of the Chairman of the School Committee. On no count, the termination order could be justified and therefore, the same has to be held as illegal.

5. The learned counsel for the petitioner has placed reliance on the following two decisions of the Supreme Court:

(1) *Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and another; JT 2001(9) S.C. 420;*

(2) Shailaja Shivajirao Patil and President Honourble Khasdar UGS Sanstha and others; 2002-II L.L.J. 813.

6. In the instant case, no material was placed before the School Tribunal in support of the assessment done by the Management regarding performance of the respondent-employee and the notices alleged to have been issued, were not duly served to the employee. It was surprising that while he was in the employment, the notices were claimed to have been sent under certificate of post and obviously this was a subsequent record sought to be prepared.

7. The view taken by the School Tribunal does not suffer from any errors apparent on the face of the record and therefore, the impugned decision does not call for any interference in this petition under Article 227 of the Constitution of India. The petition is rejected summarily. Interim order if any, stands vacated.

[B.H.MARLAPALLE, J.]